

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

CR. No. 95-075-ML

TERRENCE BOYD

MEMORANDUM AND ORDER

This matter is before the Court on a post-conviction motion for a “[w]rit of [d]eliverance . . . from USP Atlanta [,] Georgia” filed by Defendant, Terrence Boyd (“Defendant”). Docket #1168. For the reasons stated herein, the motion is denied.

Analysis

In 1997, Defendant was convicted of committing a violent crime, murder, in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(1) and 18 U.S.C. § 2. See Boyd v. United States, No. C.A. 00-612-ML, 2005 WL 2177172 (D.R.I. Sept. 8, 2005). Defendant’s conviction and sentence were affirmed on direct appeal. Id. Thereafter, Defendant moved for relief under 28 U.S.C. § 2255. Id. This Court denied habeas relief and the denial was affirmed by the First Circuit. Id.

Defendant now argues that the indictment in his case “is problematic.” Motion for Writ of Deliverance at 2; Docket #1168. Defendant contends that he is “actually innocent” of one of the “charged element[s]” in the indictment. Id. Defendant thus concludes that “[i]t is impossible for the Government to meet its burden of proof.” Id. Defendant petitions the Court to be

released from federal prison, or in the alternative, for the appointment of counsel and an evidentiary hearing.

Defendant seeks to vacate his conviction and sentence. Thus, the Court construes the motion as a second or successive § 2255 petition. A federal prisoner “must obtain certification from a court of appeals before presenting” a second or successive habeas petition. Evans-Garcia v. United States, 744 F.3d 235, 237 (1st Cir. 2014). Defendant did not seek permission from the Court of Appeals to file a subsequent 28 U.S.C. § 2255 motion, thus this Court lacks jurisdiction to consider Defendant’s motion. Pratt v. United States, 129 F.3d 54 (1st Cir. 1997).

Therefore, Defendant’s motion is denied and dismissed for lack of jurisdiction.

SO ORDERED

/s/ Mary M. Lisi

Mary M. Lisi

United States District Judge

November 21, 2014